

Why It Was Important to Win the Silicosis Case in Supreme Court

ASHISH GUPTA, AMULYA NIDHI, SHAMARUKH DHARA

In a country where the occupational health of unorganised workers goes completely unnoticed, the Supreme Court's judgment in the Silicosis case strengthens the long struggle of migrant workers in Madhya Pradesh holding the state accountable for life-threatening work conditions.

The authors are founding members of Shilpi Kendra (now Nai Shruwat). They have authored the reports on silicosis which formed the basis of the public interest litigation filed in the Supreme Court.

Ashish Gupta (999ag@gmail.com) is a medical doctor working on health-related issues. Amulya Nidhi (amulyabhai@gmail.com) is a health activist associated with Silicosis Pedit Sangh and Jan Swasthya Abhiyan. Shamarukh Dhara (Shama_mehra@yahoo.com) is a social activist working with Silicosis Pedit Sangh.

On 4 May 2016, the Supreme Court instructed the Government of Gujarat to pay ₹3 lakh as compensation to the families of 238 workers from Madhya Pradesh, who had died of silicosis contracted while working in stone crushing units in Godhra, Gujarat. This amount was to be paid within one month. The Court also directed the Government of Madhya Pradesh (MP) to rehabilitate the 304 affected workers who are still alive.

This was a landmark judgment for many reasons: it cut through established norms and procedures for recognising workers' rights and gave it a new perspective. Traditionally, any worker who suffers from an occupational disease or injury must apply for employees' state insurance (ESI) to claim for injury or death benefit under the ESI Act. But over the years, the ESI has become an anti-worker organisation that avoids addressing workers' claims by entangling claimants in mind-boggling procedures. Therefore, poor, diseased workers are denied any compensation. The present case is the

first time that a group of workers went past the ESI to claim their dues. The judgment also holds the state governments responsible and has directed them to compensate the workers first and then recover the amount from the ESI.

A worker who contracts an occupational disease is at the mercy of the employer, who often simply removes him from employment. The worker and their family are left to fight a lone battle against the factory owner and the ESI. The cases linger on for years together, and the worker either gives up or dies. In such cases, the state governments are never held responsible for their failure to protect the rights of the workers. According to this order, the Government of Gujarat is liable to pay ₹7.14 crore to the families of the 238 workers who died. An indictment of the state government, the order states that, the "state enforcement agencies of Gujarat have failed to adopt appropriate preventive measures which could have saved the lives of poor labourers." The Court went beyond providing interim relief to make two more organisations accountable—the Central Pollution Control Board (CPCB) and the ESI. The CPCB is the apex body in the country to monitor all types of pollution. Following this judgment, the ESI will need to pull its act together and be more sensitive to workers' claims.

The petitioners were an unorganised group of workers who lived in a hilly region in western MP, home to one of the most vulnerable tribes in India. It is a rain-fed area, and the tribal workers regularly migrate to Gujarat or Maharashtra to make a living as low-paid workers. For several years, the workers had been migrating to Godhra and Balasinor in Gujarat to work in quartz-crushing factories there. They worked for a daily wage of ₹80–₹100. The quartz stone of this region contains 97%–99% silica and is very valuable. However, crushed silica sand, if inhaled, is a toxic chemical. After working for three to six months in these units, workers contract a life-threatening lung disease known as silicosis. Silicosis damages the lining of air sacs and leads to the permanent scarring of lungs. The patient experiences breathlessness and becomes anorexic. There is no treatment for this condition, and the patient's condition deteriorates until they finally die a painful death. Normally, silicosis takes 15–20 years to develop, but the Gujarat silica is so toxic that it kills workers in one to two years.

Ironically, this silica has brought immense wealth to the factory owners of Gujarat, but has caused devastation in the villages and hamlets of western MP. The owners of silica mills in Godhra are among the richest businessmen of the region. On the flip side, 105 villages in western MP have been affected by the silicosis epidemic, with 1,721 patients, mostly in the age group of 19–35 years, affected in the last 10 years.

The Struggle

The battle started in 2005 when Shilpi Kendra, an Indore-based non-governmental organisation (NGO), took up an issue being raised by community-based mass organisations such as Chhuta Mazdoor Union, Jhabua, Khedut Mazdoor Chetna Sangathan (KMCS), Alirajpur, and Silicosis Pedit Sangh. The first report of Shilpi Kendra (now Nai Shuruwat), *Destined to Die*, was based on a survey of 21 affected villages. Its findings prompted the National Human Rights Commission (NHRC) to investigate the issue. The report revealed that out of the 489 persons who were exposed to silica dust in the

Godhra factories, 424 persons (86%) contracted the disease. Of these, 92% were in 15–50 years age group. Out of the 35 factories in Godhra and Balasinor, Gujarat, three factories were the source of 159 of 266 deaths (60%) and 81% of morbidity. Of those who died, 94% had less than three years of exposure. There are no records to show that they worked there. After contracting the disease, the workers returned home across the border to die quietly in their remote villages. Nobody knew why so many of the returned workers were dying from a mysterious lung disease. Their families took them to the civil hospital of Alirajpur, where they were treated for tuberculosis under the Revised National Tuberculosis Control Programme (RNTCP). Nobody asked for their occupational history. The entire male population of some villages disappeared.

Three more reports were published by Shilpi Kendra over 10 years, which revealed that the disease has claimed 589 lives and has affected 1,721 people in 105 villages in Alirajpur, Jhabua, and Dhar.

Role of the State Governments

The survey report, *Destined to Die IV 2016*, revealed that the number of patients across the 105 surveyed villages had increased. Also, the government benefits paid to them under Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and housing, health, pension, or agriculture-related schemes were very small.

The MGNREGA scheme, which provides employment to people within their own villages, was not implemented properly in this region. This failure on the part of the MP government was one of the reasons why the workers had sought employment in quartz factories.

At the same time, the Gujarat government had failed to monitor these unregulated factories and had allowed them to continue employing workers. Both states should be held accountable for the loss of life because of this issue.

The factories have refused to admit that the illness was caused by the factory environment, and have dodged all compensation claims. In fact, they clear their employment records to show that these persons had never actually worked in their factories.

Quartz-crushing units are in general subject to very stringent regulations because of the toxicity of the silica dust that is generated. But despite the clearances given by factory officials and pollution control boards, the situation on the ground remains extremely pathetic. In 1980, the Gujarat Industrial Development Corporation, Ahmedabad, notified the National Institute of Occupational Health (NIOH) of the air pollution problem caused by the quartz-crushing industry at Godhra. A survey conducted by the NIOH revealed that the work environment inside quartz-crushing factories posed a severe health hazard. It was found that the mean value of dust concentration was 81 to 660 times the threshold limit. After this survey, no authentic study was done by any government agency, but the situation is no different even today.

NHRC and Supreme Court

In 2006–07, complaints were filed in the NHRC. The commission took the issue very seriously and undertook an independent investigation in October 2007. It confirmed that in Jhabua and Alirajpur, 96 workers have died of silicosis, and 118 workers were suffering from the disease. The NHRC conducted a full bench hearing, and on 12 November 2012, recommended that the stone-crushing units be closed, and action be taken against the delinquent officials of Gujarat state. Based on a survey conducted by the district collector of Jhabua, it stated that compensation should be paid to the 238 workers who had died within eight weeks.

The commission based its recommendations on the following grounds: The tribals residing in MP had gone to work in quartz- and stone-crushing factories in Godhra, Gujarat, and after contracting silicosis, they had returned to their native places and later died. The state enforcement agencies of Gujarat had failed to adopt the necessary preventive measures which could have saved the lives of the poor labourers. Thus, the state of Gujarat has failed to protect the next of kin and the lives of 238 persons who had died of silicosis while working in stone-crushing units within its domain. Thus, the commission stated that they are entitled to compensation of ₹3 lakh to be paid by the state of Gujarat.

In 2006, a public interest litigation (PIL) was filed by PRASAR, in which an intervenor application on behalf of KMCS was prepared by Shilpi Kendra. The case has been going on for 10 years. In this PIL, the NHRC also became a petitioner and presented all the facts that it had gathered during its 2007 independent investigation. In 2009, the Court ordered that the NHRC should finalise the compensation package. The NHRC announced the compensation award in its order in November 2010, but the Government of Gujarat refused to pay the compensation on one pretext or the other and kept postponing it. The petitioner moved the Supreme Court in 2014, highlighting the non-compliance. Finally, on 4 May 2016, the Court took the Gujarat government to task for not obeying its previous decision.

Conclusions

In 2007, an investigation team constituted by the CPCB found that the quartz-crushing factories in Godhra and Balasinor were violating regulations and came out with a series of recommendations. However, most of recommendations were not followed,

and people kept dying after working in these factories. The Government of Gujarat and its factory inspector relaxed their stance after issuing show-cause notices to these factories, and no concrete action was taken. Several reports were published, including the recommendations of the NHRC investigation team, but no decisive action was taken by the Government of Gujarat. No concrete measures have been taken against the 35 listed factories where the 1,721 patients had worked.

We hope that after the recent Supreme Court order, the Government of Gujarat will wake up and strengthen its regulatory system. We also hope that the Government of Madhya Pradesh will focus more on out-migration and at least strengthen the MGNREGA and other basic social security schemes like Indira Awaas Yojana, pensions, free health treatment, and livelihood programmes for the residents of MP.

Occupational health is a neglected field in India. Factory owners do not enforce adequate precautions to prevent work-related injuries and disease. The state labour departments, which are supposed to enforce the law, work at the behest of the moneyed and powerful factory owners.

Once a worker gets injured or contracts an occupational disease, it is unlikely that they will get any compensation from the ESI. There are very few workers' organisations which fight for occupational health rights. Most take up other labour issues like wage increase, regular employment, etc. The unions do not understand the importance of safe workplaces. Owners do not want to invest in workplace safety, as they are profit-driven. For the first time, a long-drawn struggle for occupational health rights has been fought and won, and that too in an unorganised sector. But the larger malady cannot be corrected by the courts. Worker unions need to learn from this struggle and focus on occupational health. The state governments also need to ensure workers' health by strengthening the administrative framework of the labour departments and the ESI.

[As a follow-up to the judgment, the Government of Gujarat transferred ₹714 lakh on 4 June 2016 to the collectors of Jhabua and Alirajpur. The money is to be transferred by these collectors to the victims. In the last hearing on 30 June 2016, the CPCB submitted a report before the Supreme Court, in which it indicated that the air pollution in Godhra factories was up to 15 times the permissible limit.]